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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,966	10/23/2003	James Victor Cragg	USP2090A-SOT2	6193
7590	07/27/2004		EXAMINER	
Raymond Y. Chan Suite 128 180 N. Ynez Ave Monterey Park, CA 91754			RICHARDSON, JOHN A	
			ART UNIT	PAPER NUMBER
			3641	

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/690,966

Applicant(s)

CRAGG, JAMES VICTOR

Examiner

John Richardson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7, 8, 10, 12-14, 16-18 and 20 is/are rejected.
- 7) ☒ Claim(s) 4-6, 9, 11, 15 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Non Final Rejection***

1). The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2). The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3). The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4). Claims 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are vague, indefinite and incomplete, particularly as to how and in what manner the stated limitation of 'retaining magazine is stored in a storage cavity in a **balanced way**' is achieved. As presently set forth, the metes and bounds of the claims are undefined.

5). Claims 1 to 3, 7 to 8, 10, 12, 17 to 18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bissey (U.S. 5,996,865).

The reference discloses an ammunition container / pouch (item 10) for holding at least one ammunition clip / magazine (item 38), a member (item 30) having a plurality of receptacle indents (Column 2, lines 58+), said container / pouch having a front and back walls enclosing a storage cavity with a top cover / lid detail (item 24), a retaining device for said ammunition clip / magazine (item 36), a component capable of holding bullets / cartridges (item 34) with a retaining structure (item 32), the said top cover / lid detail in the form of an elongated element as disclosed in Figure 1, and capable of affixing and extending over the said storage cavity, and a fastening unit / means attached to one end of the said elongated element and substantially retaining the components being stored,

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relating to claim 2, the reference discloses the fastening means with first fastener (item 26) and second fastener (item 28) details, relating to claim 3, the said fastener means constitute a zipper that reads on the hook and loop limitation being cited by the applicant, relating to claims 7-9, the said elongated element is made of material with elastic properties (see Column 2, lines 49-52), relating to claims 10, 12, the reference discloses that the said cover / lid provides the means for preventing the said bullets from dropping out of the said pouch when the said fastener detail is in the closed position, relating to claims 17-18, and 20, the reference discloses that the said pouch item 10, can be attached to a users body as disclosed in the strap details (items 46,48).

It is noted that a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from prior art apparatus" if the prior art teaches all the structural limitations of the claim. *In re Masham*, 2 USPQ2d 1647.

Claims directed to apparatus must be distinguished from prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

Apparatus claims cover what a device *is*, not what a device *does*. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

See for example, MPEP§2114, and in addition, as set forth in MPEP§ 2115, a recitation in a claim to the material or article worked upon, does not serve to limit an apparatus claim.

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The claims contain statements about intended uses, capabilities or structure which may result upon the performance of future acts. However, said statements are not positive structural limitations and in this sense fail to comply with the requirements of the statute in failing to distinctly claim the actual limitation; In re Collier, 158 USPQ 266.

The claims contain functional phrases or clauses such as the "thereby" clauses, the content of which does not inherently follow from the actual structure recited. Thus, the scope of the claims and / or the metes and bounds thereof cannot be determined. Said clauses accordingly raise a question as to the limiting effect of the language therein, on the claims (see MPEP 2106 II, C).

6). Claims 13, 14, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bissey (U.S. 5,996,865) as applied to 1 to 3, 7 to 8, 10, 12, 17 to 18, and 20 in view of any of Terry (U.S. 2,605,033) or Finn (U.S. 5,265,365).

The reference discloses the claimed device except for citing that the Bissey pouch (item 10) comprises a further means for detachably attaching to a firearm rifle stock. The secondary references teach that it is well known in the firearm art to detachably attach pouches to rifle stocks. Both Terry (item 10) and Finn (item 20) teach pouches attached to rifle stocks. To incorporate a pouch attached to a

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rifle stock would have been obvious to one having ordinary skill in the firearm art at the time of the invention recognizing the teachings of Terry and Finn.

7). Claims 9, 11, 15, and 19 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8). Claims 4-6 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action.

9). The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10). Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Richardson whose telephone number is

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(703) 305 0764. The examiner can normally be reached on Monday to Thursday from 7.00 AM to 4.30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306 4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 305 7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 1113.

John Richardson, PE,

July 26 2004.

  
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**JACK KEITH**  
**PRIMARY EXAMINER**